

# Notice of Allowability

Application No.

10/082,340

Applicant(s)

GLADUE ET AL.

Examiner

Dr. Kailash C. Srivastava

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 11/17/2003.
2. ☒ The allowed claim(s) is/are 25-60.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 2/26/02, 6/6/02
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

***Examiner's Amendment/Comments***

1. Claims 25-60 are pending.

***Restriction/Election***

2. Applicants' election with traverse of Group I, Claims 25-53 filed 11/17/2003 in response to Office Action of August 01, 2003 is acknowledged and entered. The traversal is on the grounds that Claims 54-60 restricted as group II are drawn to a method to apply the composition claimed in the invention of Group I, Claims 25-53 and should therefore be rejoined with said claims.

3. Applicants' arguments have been fully considered. Claims 25-53 are directed to an allowable product. Pursuant to the procedures set forth in the Official Gazette notice dated March 26, 1996 (1184 O.G. 86), Claims 54-60, directed to the process of making or using the patentable product, previously withdrawn from consideration as a result of a restriction requirement, are now subject to being rejoined. Claims 54-60 are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Since all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, the restriction requirement made in Office Action of August 01, 2003 is hereby withdrawn.

***Information Disclosure Statement***

4. Applicants' Information Disclosure (i.e., IDS) filed 2/26/2002 has been made of record and considered.

5. Applicants' Information Disclosure (i.e., IDS) filed 06/06/2002 has been made of record. However, only references G-H and J-K have been considered because references A-E and I cited in said IDS are duplicate citations for references cited in IDS filed 02/26/2002.

### ***Priority***

6. Applicant's claim for priority under 35 U.S.C. 119(a-d) to PCT US 98/15835 and domestic priority under 35 U.S.C. 119(e) and 120 are acknowledged.

### ***Examiner's Amendment***

7. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this Examiner's amendment was given in a telephone interview with Mr. Laurence H. Posorske on 03/01/2004.

In the Claims:

In Claim 25 at line two after the second occurrence of word "acid", the phrase --(ARA)-- has been inserted.

8. The following is Examiner's statement of reasons for allowance:

The closest prior art of record are Kyle (U.S. Patent 5,550,156) and Kyle et al. (US Patent 5,711,983). Kyle et al. teach that DHA is obtained via aerobically cultivating *Cryptocodinium cohnii* and as produced is suitable for aquaculture (Abstract, Lines 4-15). Kyle teaches preparing a product comprising DHA and ARA, wherein each of said components are separately obtained as single cell microbial oils from culturing *Cryptocodinium cohnii* and *Pythium insidiosum*

respectively. However, teachings from said patents do not suggest or provide motivation to combine them to obtain the claimed invention, wherein a particulate material comprising both DHA and ARA is prepared by drying a slurry comprising a polar lipid extract from a DHA producing and ARA producing microorganisms.

Thus, none of the prior art cited *supra* alone or in combination teach or reasonably suggest a composition and a method to obtain the claimed invention, wherein a particulate material comprising both DHA and ARA is prepared by drying a slurry comprising a polar lipid extract from a DHA producing and ARA producing microorganisms and applying said composition in aquaculture.

It is noted that the microorganisms, producing DHA and ARA required to practice the claimed invention are currently available from ATCC. It appears that said microorganisms should remain available to the public beyond the effective life of the patent. Any information to the contrary which comes to applicants' attention during the prosecution of this application must be inserted into the record or otherwise be brought to the attention of this Office by applicants.

The complete name and address of the depository should be inserted in the specification.

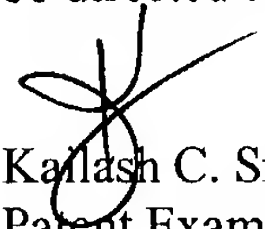
Any comments considered necessary by applicants must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Claims 25-60 are allowed.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Kailash C. Srivastava whose telephone number is (571) 272-0923. The examiner can normally be reached on Monday to Thursday from 7:30 A.M. to 6:00 P.M. (Eastern Standard or Daylight Savings Time).

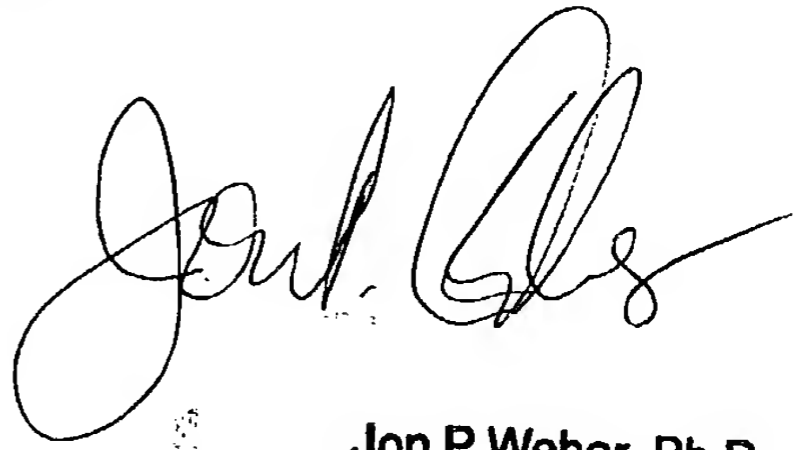
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (571) 272-0926 Monday through Thursday. The fax phone number for the organization where this application or proceeding is assigned is (703)-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



Kailash C. Srivastava, Ph.D.  
Patent Examiner  
Art Unit 1651  
(571) 272-0923

March 2, 2004



Jon P. Weber, Ph.D.  
Primary Examiner